



County of San Diego

GARY W. ERBECK
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
P.O. BOX 129261, SAN DIEGO, CA 92112-9261
(619) 338-2222 FAX (619) 338-2088
1-800-253-9933
www.sdcdeh.org

JACK MILLER
ASSISTANT DIRECTOR

June 17, 2009

Mr. Brad Raulston, Director
Community Development Commission of National City
1243 National City Blvd.
National City, CA 91950

Dear Mr. Raulston:

**CERTIFICATE OF COMPLETION
CAL-EPA SITE DESIGNATION COMMITTEE RESOLUTION NO. 00-06
A PORTION OF THE MARINA VILLAGE PROJECT, NATIONAL CITY, CALIFORNIA
VOLUNTARY ASSISTANCE PROGRAM, FILE #H23772-004
FORMER ACE METALS PROPERTY, PARCEL NO. 559-118-02**

The Community Development Commission (CDC) of the City of National City, California requested, on December 7, 2000, that the State Site Designation Committee (Committee) designate the County of San Diego Department of Environmental Health (County DEH) as the Administering Agency under Chapter 6.65 of Division 20 of the Health and Safety Code (Sections 25260 *et seq.*) (Chapter 6.65), to oversee the Site Investigation and Remedial Action for the following Assessor Parcel Numbers (APN): 559-118-02, 559-160-11, 559-117-04, -05, -06, -07, -12, -16 and -17 (Resolution No. 00-06). These parcels are located in the area generally bounded by 23rd Street to the north, Bay Marina Drive (former 24th Street) to the south, the I-5 Freeway to the east, and Cleveland Avenue to the west, City of National City. This request also specified that the cleanup would be conducted pursuant to the Polanco Act, under County DEH supervision. County DEH was designated as the Administering Agency by the Committee (see a copy of the Resolution No. 00-06 dated April 13, 2001, attached as Exhibit "A" to this Certificate), and was also selected by the CDC to provide oversight under the Polanco Act.

This Certificate of Completion covers only parcel No. 559-118-02 (formerly Ace Metals property), addressed in Resolution No. 00-06. For the purpose of this Certificate of Completion, "Site" means former Ace Metals Property with APN 559-118-02. It should be noted that the parcels with APN 559-117-04, -05, -06, -07, -12, -16, and -17 are pending remediation and subsequent redevelopment under the Site Designation Resolution No. 00-06. (See attached Exhibit "C.")

Rore, Inc. (an environmental consultant), on behalf of CDC, submitted the "Property Mitigation Plan-Revision 2" (PMP) to the County DEH on October 4, 2006. The PMP was approved on October 31, 2006. Rore, Inc., on behalf of CDC, submitted the "Property Mitigation Report" on March 22, 2007. Both of these documents were for the Site, former Ace Metals property.

In accordance with Health & Safety Code Section 25264, as the Administering Agency, and after appropriate consultation with other agencies and following a 60-day review period, County DEH has determined that the Site Investigation and Remedial Action at the above-referenced Site has been satisfactorily completed, and that a permanent remedy has been accomplished [25264(b)]. Actions taken are described in the case closure summary attached as Exhibit "B" to this Certificate.

As the Administering Agency, County DEH certifies that applicable remedial action standards and objectives were achieved [25263(b)] at the Site, and issues this Certificate of Completion pursuant to Health and Safety Code Sections 25264(b). Except as provided in Health and Safety Code Sections 25264(b) and 25265, this Certificate of Completion constitutes a determination that the Responsible Party, CDC, has complied with the requirements of all state and local laws, ordinances, regulations, and standards that are applicable to the Site Investigation and Remedial Action for which this Certificate is issued [25264(c)].

State law limits the actions that agencies other than the County DEH may take against the Responsible Party, CDC, with respect to the hazardous materials release that was the subject of the Site Investigation and Remedial Action for which this Certificate is issued. See Health and Safety Code Section 25264(c) and (d).

This Certificate of Completion is issued effective this date by the County of San Diego, Department of Environmental Health, as the Administering Agency. The County DEH Voluntary Assistance Program case #H23772-004 will be closed with the issuance of this Certificate of Completion.

Additionally, pursuant to County DEH authority as the designated agency for purposes of the Polanco Act cleanup program, in accordance with California Health & Safety Code Section 33459.3(c), County DEH finds that the conditions of California Health & Safety Code Section 33459.3(l) have been met. Therefore, County DEH hereby certifies that the remedial action plan for Assessor Parcel Numbers 559-118-02 has been completed, and the immunities provided by California Health & Safety Code Section 33459.3 are in effect. These immunities are limited by the provisions set forth in California Health & Safety Code Section 33459.3(g)-(k).

Please contact Dr. Nasser Sionit, at 619-338-2239, if you have questions regarding this matter.

Sincerely,



JACK MILLER, Acting Director
Department of Environmental Health

JM:NS:kd

Attachments: Exhibit A, Site Designation Resolution No. 00-06
Exhibit B, Case Closure Summary
Exhibit C, Certificate of Completion Conditions

cc: Don Johnson, Chair, Site Designation Committee
Diane Trujillo-Carrillo, Site Designation Committee
Richard Oppen, Esq., Oppen & Varco, LLP, Counsel for the CDC
Patricia Beard, Community Development Commission of National City
Daniel Lohr, Rore, Inc.



Winston H. Hickox
Agency Secretary,
Cal/EPA

State of California
California Environmental Protection Agency

Gray Davis
Governor



Air Resources Board | Department of Pesticide Regulation | Department of Toxic Substances Control

Integrated Waste Management Board | Office of Environmental Health Hazard Assessment | State Water Resources Control Board | Regional Water Quality Control Board

RECEIVED
2001 APR 13 PM 12 42

Exhibit "A"

April 4, 2001

D. E. H.
MAILROOM

Mr. George McCandless
County of San Diego
Department of Environmental Health
P.O. Box 129261
San Diego, California

Dear Mr. McCandless:

DESIGNATION OF AN ADMINISTERING AGENCY FOR
MARINA VILLAGE PROJECT, NATIONAL CITY, CALIFORNIA

Pursuant to Health and Safety Code, Division 20, Chapter 6.65, Section 25260 *et seq.* (AB 2061, Chapter 1184, Statutes of 1993 (Umberg)), the Site Designation Committee has designated the San Diego County as the administering agency for the Marina Village Project hazardous materials release site (site). The site is Enclosed is a copy of approval Resolution No. 00-06.

The administering agency's responsibilities include administering all state and local laws that govern the site cleanup, determining the adequacy and extent of cleanup, issuance of necessary authorizations and permits, and following the determination that an approved remedy has been accomplished, issuance of a certificate of completion. All of these activities should be administered after consultation with other regulatory agencies having jurisdiction over cleanup activities at the site. The administering agency should hold an initial meeting with support agencies to clarify roles, arrange cost recovery contracts, and set project proposed timeliness.

If requested, a Consultative Work Group can assist in coordinating all site investigation and remediation activities. The work group would consist of front-line staff from all appropriate agencies. As the administering agency, your staff should



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100% postconsumer paper

1001 I Street | Sacramento, CA 95814

phone: 916.445.3846 | fax: 916.445.6401

www.calepa.ca.gov

Mr. George McCandless

April 4, 2001

Page 2

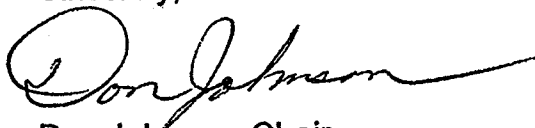
~~organize and chair meetings of the work group if one is formed. The work group should meet within 45 days of designation and as often as necessary thereafter.~~

To optimize coordination, the work group would develop a work plan for site cleanup. The work plan should layout the time frame for accomplishing site cleanup activities. The work plan should identify all permits and authorizations necessary for site cleanup, requirements for compliance with appropriate agency laws, ordinances and regulations, and areas where regulatory duplication and overlap can be eliminated. Streamlining the process should be emphasized.

Please keep us advised of the progress made on this site cleanup by providing Reports on a regular basis. Enclosed is a recommended reporting form.

This new program, and all our existing programs, can be successful only if original and flexible processes are used to implement our state's high environmental standards. I am confident that your staff has the expertise and ingenuity to make this Site Designation application a model of success. The Office of the Secretary supports and is available to assist you in these efforts. If you have any concerns, please call Ms. Laurie Grouard, Acting Site Designation Coordinator, at (916) 323-3394.

Sincerely,



Don Johnson, Chair
Site Designation Committee

Enclosures

cc: See next page

Mr. George McCandless

April 4, 2001

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cc: Ms. Sayareh Amirebrahimi
Cleanup Operations Branch - Cypress
5796 Corporate Avenue
Cypress, CA 90630

Mr. John Robertus
Executive Officer
San Diego Water Quality
Control Board
9771 Clairemont Mesa Blvd.
San Diego, California 92124-1324

Mr. Richard Oppen
McKenna and Cuneo, L.L.P.
Symphony Towers, Suite 3300
San Diego, California 92101-8105

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
SITE DESIGNATION COMMITTEE
RESOLUTION NO. 00- 06**

December 7, 2000

National City "Marina Village"

WHEREAS, Chapter 6.65 of the Health and Safety Code, commencing with Section 25260, establishes a Site Designation Committee; and

WHEREAS, the Site Designation Committee may designate an Administering Agency to oversee a site investigation and remedial action at a hazardous materials release site upon request of a responsible party; and

WHEREAS, the Community Development Commission of National City (a redevelopment agency), a responsible party as defined in Health and Safety Code Section 25260(h), requested the Site Designation Committee to designate an administering agency to oversee site investigation and remedial action at three blocks in the vicinity of 20th Street and Cleveland Avenue, National City, San Diego County, more particularly described as San Diego County Assessor's Parcels 559-118-02, 559-160-11, 559-117-04, -05, -06, -07, -12, -16, and -17; and

WHEREAS, this site is a hazardous materials release site as defined in Health and Safety Code Section 25260; and

WHEREAS, the Site Designation Committee received the request for designation of an administering agency on August 18, 2000 and review by the Site Designation Committee was waived by the applicant until the December, 2000 meeting; and

WHEREAS, the Site Designation Committee held a meeting on September 28, 2000, and provided an opportunity at the meeting for public comment regarding the application; and

WHEREAS, the Site Designation Committee considered the application and, furthermore, considered all factors and criteria set forth in Health and Safety Code Section 25262(c); and

WHEREAS, the Community Development Commission of National City agrees to reimburse appropriate agencies for their appropriate oversight costs and/or costs of permit development, where those agencies' significant involvement and/or permit development is necessary for the furtherance of the project goals; and

WHEREAS, the Site Designation Committee has determined that, based on consideration of all of the factors listed in Health and Safety Code Section 25262(c), the County of San Diego, Department of Environmental Health is the appropriate agency to act as the administering agency; and

SITE DESIGNATION COMMITTEE

Resolution No. 00-06

Page Two

WHEREAS, the site involves issues directly and materially related to requirements of the San Diego Regional Water Quality Control Board and the Department of Fish and Game; and

NOW, THEREFORE BE IT RESOLVED that the Site Designation Committee hereby designates County of San Diego, Department of Environmental Health as the administering agency for the site; and

BE IT FURTHER RESOLVED that this designation is subject to the following conditions:

1. The County of San Diego, Department of Environmental Health, shall consult, on an ongoing basis, with all appropriate agencies who have expressed an interest in this site, including all agencies who would otherwise be issuing a permit or other form of authorization:
 - a) in administering all state and local laws which are applicable;
 - b) in determining the adequacy of site investigation and remedial action activities; and
 - c) prior to issuing any permit or other form of authorization.
2. Such consultation will also include notification if information becomes available to the administering agency that the original application was inaccurate or was incomplete.
3. If an advisory team is convened by the Site Designation Committee, a representative of the administering agency shall attend all advisory team meetings.
4. The County of San Diego, Department of Environmental Health shall submit quarterly reports to the Site Designation Committee and to other appropriate agencies concerning the status of the investigation and/or remediation of the site and shall comply with applicable public participation requirements.
5. The County of San Diego, Department of Environmental Health shall provide at least 60 days notice to interested agencies and parties prior to issuing a certificate of completion for the site.

SITE DESIGNATION COMMITTEE

Resolution No. 00-06

Page Three

6. The responsibility party will reimburse the appropriate agencies' costs, including the San Diego Regional Water Quality Control Board and the Department of Fish and Game.
7. The Site Designation Committee finds that the County certifies that issues at the site are related to potential risks to human health and the environment of sufficient significance to warrant reimbursement of the San Deigo Regional Water Quality Control Board's and the Department of Fish & Game's oversight expenditures.

CERTIFICATION

The undersigned Chair of the Site Designation Committee does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the Site Designation Committee held in Sacramento, California on December 7, 2000.

DATED: April 4, 2001

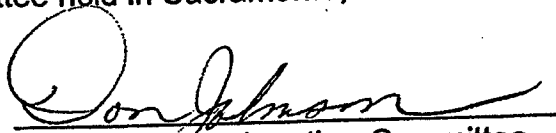

Chair, Site Designation Committee

Exhibit "B"

Case Closure Summary Non-LOP or Voluntary Assistance Program

I. AGENCY INFORMATION

DATE: January 14, 2009

Agency Name: County of San Diego, Environmental Health, SAM	Address: P.O. Box 129261
City/State/ZIP: San Diego, CA 92112-9261	Phone: (619) 338-2222 FAX: (619) 338-2377
DEH Staff Person: NASSER SIONIT	Title: ENVIRONMENTAL HEALTH SPECIALIST III

II. CASE INFORMATION

Case No. H23772-004	RWQCB Case No. N/A	
Site Name: FORMER ACE METALS, APN 559-118-02 A PORTION OF MARINA VILLAGE PROJECT (HARBOR DISTRICT)	Site Address: 720 W. 23 rd St., National City, CA 91950-6425 (Historic Address: 2501 CLEVELAND AVE., NATIONAL CITY, CA 91950-6425)	
Property Owner: Community Development Commission of National City 1243 National City Blvd. National City, CA 91950		
Responsible/Requesting Parties Patricia Beard	Address Community Development Commission of National City 1243 National City Blvd National City, CA 91950	Phone Number 619-336-4255
Type of Case: NON-TANK CASE		
Agency notification of DEH Oversight: DTSC: 13-Apr-2001 RWQCB: 13-Apr-2001		

III. SITE CHARACTERIZATION AND/OR INFORMATION

Purpose of Investigation: CHEMICAL RELEASES & SPILLS	Substances Investigated: GASOLINE, DIESEL, WASTE OIL & HEAVY METALS		
Site Characterization complete? YES	11/9/2006		
Monitoring Wells Installed? YES	Total Number: 2	Proper Screened Interval? YES	Number of decommissioned wells: 2
Range of groundwater levels on the site? 27 - 32 feet below surface (MEASURED)		Groundwater Flow Direction: SOUTHWEST (ESTIMATED)	
Most Sensitive Current Use: Existing Beneficial Groundwater Use: MUN, AGR, IND Existing Beneficial Surface Water Use: IND, REC2 and Potential: REC1			
Are Drinking Water Wells Affected? NO	RWQCB Basin Number: 909.12-La Nacion Hydrologic Sub Area		
Is Surface Water Affected? NO	Nearest Surface Water name: N/A		
Off-Site Beneficial Use Impacts (addresses/locations): N/A			
TREATMENT AND DISPOSAL OF AFFECTED MATERIAL			
Material	Amount (Include Units)	Action (Treatment or Disposal)	Date
SOIL	1200 CUBIC YARD	TREAT OFF-SITE, MECCA, CA	11/13/2006
SOIL	430 CUBIC YARD	TREAT ON-SITE, DISPOSED AT Mecca, CA	1/3/2007

Non-LOP - Underground Storage Tank Oversight handled outside the LOP
Non-Tank - Voluntary Assistance Program

Case Closure Summary **Non-LOP or Voluntary Assistance Program**

III. SITE CHARACTERIZATION AND/OR INFORMATION (Continued)

H23772-004

MAXIMUM DOCUMENTED CONTAMINANT CONCENTRATIONS

	MAXIMUM	REMAINING
<u>SOIL</u>		
Gasoline	< 1 mg/kg	< 1 mg/kg
Diesel	= 2200 mg/kg	= 7 mg/kg
TRPH	= 36000 mg/kg	= 315 mg/kg
Motor Oil	=24900 mg/kg	=24900 mg/kg
Chromium	=20.1 mg/kg	=20.1 mg/kg
Arsenic	= 77.7 mg/kg	= 8.8 mg/kg
Cadmium	= 26.3 mg/kg	= 3.09 mg/kg
Lead	= 7820 mg/kg	= 400 mg/kg
Mercury	= 36.47 mg/kg	= 36.47 mg/kg
Zinc	= 3110 mg/kg	= 451 mg/kg
<u>WATER</u>		
Gasoline	< 50 ug/l	< 50 ug/l
Diesel	< 500 ug/l	= 500 ug/l
Benzene	< 1 ug/l	< 1 ug/l
Toluene	< 1 ug/l	< 1 ug/l
Ethyl benzene	< 1 ug/l	< 1 ug/l
Xylene (individual isomers or total)	< 3 ug/l	< 3 ug/l
Methyl-tert-butyl ether (MTBE)	< 2 ug/l	< 2 ug/l

Case Closure Summary

Non-LOP or Voluntary Assistance Program

Comments: The subject site is a 1.27-acre vacant parcel situated within the northeastern portion of the Harbor District Redevelopment Area in the city of National City. The buildings used by former Ace Metals have been demolished and the property was used for parking by automotive dealerships for several years until 2006. The proposed redevelopment of the property is for retail and tourist commercial uses with slab-on-grade structure. The site is located in the Lower Sweetwater Hydrologic Area. The beneficial uses of the groundwater aquifer beneath the site include existing municipal, agricultural, and industrial.

The principal areas and features of concern included observed discoloration of surface soil, a hydraulic baler (metal crusher/compactor), a hydraulic lift, and a scale. The contaminants of concern have been identified as petroleum hydrocarbons and heavy metals.

A Property Mitigation Plan (PMP) was submitted and after revisions and modifications it was approved by DEH on October 31, 2006. The PMP explains the goals of the remediation activities and proposes to provide a property that does not pose an unacceptable risk to human health and the environment.

The initial site investigation identified six soil surface hotspots throughout the property which appeared to have been impacted by hazardous chemicals released as a result of historical operations at the site. Further investigation detected seven more hotspots. All suspect areas were excavated until no visible evidence of contamination was observed and field screening tests revealed no hotspots present. The excavations in some locations extended up to a maximum depth of six feet below soil surface. Subsequently, conformational sampling and analysis of the soil were performed. For results see above table of data.

During demolition of the hydraulic baler, a three-foot diameter sump was identified that extended about 38 feet below ground surface. The oil and water in the sump were pumped out and the sump was later slurry filled and closed in place. Soil samples were collected for analysis. For results see above table of data.

The hydraulic lift was uncovered and removed with an excavator. Soil around and beneath the lift was over excavated up to six feet below the surface and conformation soil samples were collected for analysis.

A concrete vault used for the former scale was discovered to be filled with concrete rubble and debris. The debris was removed and the vault was demolished and removed. Soil samples were collected from the bottom of the vault for analysis. For results see above table of data.

The areas excluding the hotspots and the features, called non-hotspots, were divided into approximately 2000 square feet sample grids of 5 feet by 5 feet. A total of 27 soil borings were advanced in the non-hotspot areas and soil samples were collected at several depths to a maximum of nine feet below the surface.

All of the excavated soils were stockpiled on-site in two segregated piles and were characterized. The first stockpile soil was approximately 1200 cubic yards and was disposed to Mecca, California. The second stockpile soil, approximately 430 cubic yards, was treated on-site (metal stabilization) and disposed to Mecca, California.

Groundwater data from two monitoring wells on-site showed no detections of TPH at gasoline and diesel ranges.

A Tier 2 site-specific human health risk characterization for commercial scenario was calculated using maximum concentrations of Arsenic, Cadmium, and Lead. The consultants conclude that the total risk associated with Arsenic, Cadmium, and Lead is at the minimum level and, therefore, the residual soil left in place does not pose any risk to the public health and/or environment. The consultants recommend no further action and DEH/SAM concurs with the consultant's recommendation.

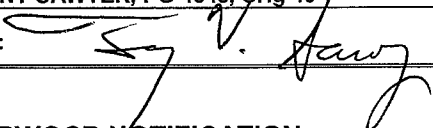
Case Closure Summary
Non-LOP or Voluntary Assistance Program

IV. CLOSURE

h23772-004

Does completed corrective action protect existing beneficial uses per the Regional Board Basin Plan? YES
Does completed corrective action protect potential beneficial uses per the Regional Board Basin Plan? YES
Does corrective action protect public health for current land use? YES
Case review based on proposed use as: COMMERCIAL
Are there other issues DEH needs to follow up on: NO
Site Management Requirements: Any contaminated soil excavated as part of subsurface construction work must be managed in accordance with the legal requirements at that time.
Should corrective action be reviewed if land use changes? YES
List Enforcement Actions Taken: N/A
List Enforcement Actions Rescinded: NONE
Is this account up to date and current? YES

V. LOCAL AGENCY REPRESENTATIVE DATA

Name: TONY SAWYER, PG 4345, CHg 40	Title: HYDROGEOLOGIST
Signature: 	Date: 1-14-09

VI. RWQCB NOTIFICATION

Date Submitted to RWQCB: N/A, VAP SOIL ONLY CASE	RWQCB Response: N/A
RWQCB Staff Name: -----	Title: ----- Date: ---

VII. ADDITIONAL COMMENTS, DATA, ETC.

This document and the related CASE CLOSURE LETTER, shall be retained by the lead agency as part of the official site file.

Exhibit "C"

Certificate of Completion Conditions Marina Village – Ace Metals Redevelopment Project

This Certificate of Completion for the Site Investigation and Remedial Actions for the property located in the area generally bounded by 23rd Street to the north, Bay Marina Drive (24th Street) to the south, the I-5 Freeway to the east and Cleveland Avenue to the west known as the Marina Village Ace Metals Redevelopment Project, is subject to the following conditions:

1. Deed Covenant – This Certificate of Completion is subject to Land Use Restrictions contained in the Deed Covenant (copy attached).
2. Site Management Requirements – Any contaminated soil excavated as a part of any future subsurface construction work must be managed in accordance with the legal requirements at that time.
3. Annual Status Report on the Remaining Parcels – The following parcels are pending redevelopment under Site Designation Resolution No. 00-06: Assessors Parcel Numbers 559-117-04, -05, -06, -07, -12, -16, and -17. Until these parcels are developed or removed from the Site Designation process, the Redevelopment Agency is to provide an annual status report no later than July 1st of each year.



*Free Recording Pursuant to Cal. Gov't Code
§ 6103 and § 27383*

MAY 18, 2009 12:18 PM

RECORDING REQUESTED BY:
Community Development Commission
City of National City
140 E. 12th Avenue
National City, California 91950
Attn: Redevelopment Director

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
DAVID L. BUTLER, COUNTY RECORDER
FEES: 0.00

PAGES: 15



WHEN RECORDED, MAIL TO:
Dept. of Environmental Health
County of San Diego
1255 Imperial Ave, 3rd Floor
San Diego, California 92101
Attn: George McCandless

Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630
Attn:
Southern California Cleanup Operations

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

For Property at:

720 West 23rd Street
National City, California

San Diego County Assessor's Parcel No.: 559-118-02.

INTRODUCTION

This Covenant ("Covenant") is made by the Community Development Commission of the City of National City, a body corporate and politic (the "Covenantor"), the current owner of property situated in the City of National City, County of San Diego, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"). This Covenant is made for the benefit of the County of San Diego ("County"), a political subdivision of the State of California. This Covenant shall run with the land that constitutes the Property. Successive owners of the Property or any part thereof are bound by this Covenant for the benefit of the County in perpetuity. Covenantor and County intend this

Covenant to fulfill the requirements and to have the effects set out in section 1471 of the California Civil Code.

STATEMENT OF FACTS

1.01 The Property is more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference. This Property is also identified as San Diego County Assessor's Parcel No.: 559-118-02. Exhibit "B", attached hereto and incorporated herein by this reference, generally depicts the Property location. The Property is located in the area now generally bounded by 23rd Street on the north, Interstate 5 to the east, 24th Street to the south, and Cleveland Avenue to the south.

1.02 On December 07, 2000 the County Department of Environmental Health (DEH) was appointed as the "administering agency" for the mitigation of environmental conditions at the Property pursuant to Chapter 6.65 of Division 20 of the California Health and Safety Code sections 25260, *et seq.* ("Unified Agency Review of Hazardous Sites Law").

1.03 In its capacity as administering agency DEH has determined that soils within the Property were remediated to levels safe for commercial or industrial land use. DEH has requested the recording of a covenant to restrict future uses of the Property, such as residential use and day care use, and to set conditions on future site excavation.

1.04 In its capacity as administering agency DEH has supervised all aspects of the site investigation and remedial action necessary to respond to hazardous materials releases on the Property. DEH has determined in consultation with other environmental agencies that, although hazardous material releases have been appropriately addressed, certain further acts must be done or refrained from on the Property to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in Section 25260 of the Health and Safety Code.

1.05 In October 21, 2006, the DEH approved the Property Mitigation Plan Revision 2 ("PMP2") for the Property prepared by RORE, Inc. The PMP2 described procedures to mitigate soil impacted by hazardous materials, which involved the excavation of impacted soil at the Property and off-site disposal of the impacted soil. Under the procedures described in the PMP2, RORE, Inc. performed Property mitigation and documented the mitigation in a Property Mitigation Report, dated March 2007, which the DEH has approved. The Property Mitigation Report documented: 1) mitigation activities which reduced the level of hazardous materials in the soil on the Property; 2) confirmation sampling to confirm the reduction of hazardous materials in the soil at the Property; 3) and a risk assessment at the Property to conclude that the Property does not pose environmental or human health risks when put to use for commercial or industrial purposes. The Property Mitigation Report describes mitigation activities and confirmation sampling undertaken at the Property to make the Property safe for commercial or industrial uses. The Property Mitigation Report also identified the possibility that future excavations up to six (6) feet below the surface could encounter hazardous materials in the soil at the Property.

1.06 Further information about the property mitigation efforts at the Property can be obtained from reviewing the files maintained by DEH Voluntary Assistance Program (VAP)

ARTICLE II **DEFINITIONS**

2.01 County Department. "County Department" or "DEH" means the Department of Environmental Health for the County of San Diego and includes its successor agencies, if any.

2.02 Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who hold title to all or any portion of the Property.

2.03 Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III **GENERAL PROVISIONS**

3.01 References to state law. References to state laws shall be construed to refer to the cited section of state law as it existed on the date this Covenant was made, or to successor and supplemental provisions of state law, as necessary to give effect to the principle purpose of this Covenant: to enable the County to protect present and future human health and safety and the environment by restricting the use of the Property and by prohibiting activities on the Property, in perpetuity.

3.02 Applicability. The terms of this Covenant pertain to the entire Property, and to any part thereof, and to every Owner of the Property.

3.03 Term. This Covenant is effective upon signature by the Community Development Commission of the City of National City. Unless ended in accordance with the Termination paragraph in Article VI below, by law, or jointly by the Owner and the County in the exercise of their discretion, this Covenant shall continue in effect in perpetuity.

3.04 Warranty of Ownership. Covenantor warrants that as of the date this Covenant was made, Covenantor was the owner of the entirety of the Property.

3.05 Relationship to the Property. Each act that the Owner will do or refrain from doing on his land pursuant to this Covenant relates to the use of the Property.

3.06 Necessity. Covenantor acknowledges that DEH has determined, based on its supervision of all aspects of the site investigation and remedial action conducted on the Property, that the acts the Owner is required to do or refrain from doing on the Property pursuant to this Covenant are each reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in Section 25260 of the Health and Safety Code, and will remain necessary in perpetuity.

3.07 Necessity. Covenantor admits and agrees that the covenants made herein to do or refrain from doing acts on the Property are each reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in Section 25260 of the Health and Safety Code, and will remain necessary in perpetuity.

3.08 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, requirements and conditions (collectively referred to as "Restrictions" or as "Restrictions and Requirements"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Civil Code Section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of the County; and (d) is enforceable by the County pursuant to state law regarding covenants and pursuant to Article V of this Covenant. This Covenant restricts activities and uses only upon the capped portion of the Property depicted in the attached Exhibit "C".

3.09 Binding upon Owners/Occupants. This Covenant binds all Owners of the Property including their successors, heirs and assigns; and in addition to the extent allowed by law binds the assignees, agents, employees, and lessees of Owners. Pursuant to this Covenant and Civil Code Section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the County.

3.10 Other Applicable Law. Compliance with this Covenant does not relieve Owner of any obligations under other applicable law, regulation, ordinance, permit, or order.

3.11 Written Notice of the Presence of Hazardous Substances. Filing or recording this Covenant does not constitute compliance with and shall not relieve any Owner from his obligation to comply with the requirements of Section 25359.7 Health & Safety Code in connection with a particular sale, lease or rental of the Property or a portion thereof. (Section 25359.7 requires an owner of nonresidential real property who knows or has reasonable cause to believe that a release of hazardous substance is located on the property to provide written notice of such condition to a buyer, lessee or renter of the property prior to a sale, lease or rental of the property.)

3.12 Governmental Powers. This Covenant does not restrict or limit the scope or use of the legislative or regulatory powers of the County, DEH, or any other County agency. The County may exercise these powers or may decline to exercise these powers with respect to the Property and any Owner or Occupant as it deems appropriate whether or not this Covenant is applicable or is invoked in any future circumstances.

3.13 Notice of Conveyances of Property. Covenantor and County request that each Owner provide notice to DEH not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances).

3.14 Incorporation into Deeds, Leases and Subleases. Covenantor and County request that each Owner or Occupant, from and after the date of recordation of this Covenant, incorporate the Restrictions and Obligations set forth herein into each and all deeds and leases for any portion of the Property; and further request that each Owner or Occupant include in any instrument conveying any interest in all or any portion of the Property, including but not limited to deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A COVENANT TO RESTRICT CERTAIN USES AND ACTIVITIES OF THE PROPERTY, IN PERPETUITY. THE INSTRUMENT THAT SETS OUT THESE RESTRICTIONS IN FULL IS RECORDED IN THE OFFICIAL RECORDS OF THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON [DATE], FILE NO. _____.

ARTICLE IV **RESTRICTIONS AND REQUIREMENTS**

4.01 Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

These uses may only occur if a variance, modification or termination allowing one or more of these uses is granted by the County as discussed below in Article VI.

4.02 Prohibited Activities.

(a) Any soils at the Property containing hazardous materials which are brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

(b) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property soils.

4.03 Access. Owners shall provide the County and DEH and their respective designees reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the County or DEH.

4.04 Cure, Cure upon Notice, Cure Prior to Conveyance. Each Owner must promptly correct to the satisfaction of County any act done or omitted by him on the Property in violation of this Covenant, unless that act was done or omitted pursuant to a variance issued by DEH as provided in Article VI of this Covenant. This obligation accrues upon the doing or omitting of any act in violation of the Covenant, is renewed upon notice by the County or DEH, and is applicable regardless of notice or the absence thereof prior to any conveyance of any part of the Property.

4.05 Obligation of Successive Owners to Cure. Notwithstanding Section 1446 of the Civil Code, as a separate covenant imposing an obligation to act concurrent with ownership, each Owner of any part of the Property shall promptly correct to the satisfaction of County any act done or omitted by a prior Owner on that part of the Property in violation of this Covenant, unless that prior act was done or omitted pursuant to a variance issued by DEH as provided in Article VI of this Covenant. This obligation accrues regardless of notice or disclosure or the absence of notice or disclosure by the prior Owner or the County.

ARTICLE V **ENFORCEMENT**

5.01 The County may enforce this Covenant as provided by state law. This may include but is not limited to requiring any Owner to modify or remove any improvements placed on the Property in violation of the restriction set forth in this Covenant.

5.02 The failure of the County to enforce this Covenant shall not constitute a waiver of the County's power to enforce this Covenant.

5.03 This Covenant is also enforceable by the State of California pursuant to section 25355.5(a)(1)(C) of the Health and Safety Code.

5.04 As an alternative to or a supplement to enforcement of this Covenant, the County, DEH or any other County or State agency may elect to take any other regulatory or enforcement action authorized by law in response to any act done or omitted by any Owner on any part of the Property.

ARTICLE VI **VARIANCE, MODIFICATION, AND TERMINATION**

6.01 In General.

(a) This Covenant is for the benefit of the County in perpetuity, without conditions or limitations. This Covenant is not imposed by the County as an exercise of regulatory authority, nor is it reviewable in any court as a regulation, County regulatory act, or permit. This covenant is voluntarily made by the Owner of this Property to ensure that said Owner and subsequent Owners of this land do not endanger public health, safety or the environment by taking actions on this land that are not consistent with the restrictions set forth within this Covenant. The County has consented to be the beneficiary of this Covenant solely to ensure that the obligations

and restrictions imposed by this covenant can be enforced by a public entity if necessary in response to a breach of the Covenant by the owner or a subsequent owner.

(b) This Article describes variance, modification and termination processes that an owner or subsequent owner of this Property may invoke under specified conditions. If these processes are invoked, the County in its sole discretion may choose to conduct and participate in those processes in good faith, or the County may choose instead to presume the continued viability of this covenant unless and until the covenant is terminated or modified by a court of law at the request of the owner based on applicable state law.

(c) No decision of the County in connection with a variance, modification or termination request shall limit the rights of an owner or subsequent owner to seek relief from this covenant by any other means or on any grounds provided in state law.

6.02 Variance.

(a) Any Owner may apply to DEH for a written variance from the provisions of this Covenant. Variance requests may seek approval of land uses or land activities that conflict with or that otherwise would not comply with the Restrictions and Requirements set forth in this Covenant, including those listed in Article IV.

(b) A variance is not a permit and the granting or denial of a variance from this Covenant is not a regulatory act. Any variance from the Covenant granted by the County or DEH is a voluntary decision by the beneficiary of this Covenant to forego enforcement of the Covenant to a defined and limited degree in a specific set of circumstances.

(c) DEH may determine procedures and conditions for considering variance requests in its sole discretion, either by written policy or on a case-by-case basis. For example and without limitation, DEH may require: that sufficient funds be deposited in advance to cover the estimated costs to DEH to process the variance request, and any past costs DEH or other County agencies have incurred in connection with the proposed project (e.g., to participate in the CEQA process before an application for a variance was submitted); that the applicant covenant not to sue and agree to hold harmless, defend and indemnify the County and related parties in connection with the variance request; that the applicant provide any information or analysis that DEH deems necessary; and that the applicant prepare or assist in the preparation of any reports or documents or drafts of reports or documents DEH deems necessary to comply with the California Environmental Quality Act (CEQA) or other state laws.

(d) Notwithstanding section 15096 of the CEQA Guidelines, in any situation in which the County is not the lead agency under CEQA for a proposed project that would require a variance, DEH may require any additional or supplemental analysis it deems necessary to adequately inform a DEH decision to grant or deny a variance.

(e) DEH may, in its discretion, issue or deny a variance. DEH will determine whether the applicant has demonstrated that under all the circumstances the land uses or land activities proposed within a variance request would not pose a threat to human health or the environment, or adversely affect any other part of the Property. DEH will base its decisions concerning the variance request on that determination.

(f) DEH may modify, limit or condition any requested variance. For example and without limitation DEH may condition a variance on further remedial activity that DEH deems necessary, or it may require that activities be conducted pursuant to an approved plan (e.g., a Soil Management Plan and a Health and Safety Plan) or in a specific manner.

(g) Prior to agreeing to issue a variance under this section, DEH or the County may, in its discretion, exercise any legal authority conferred upon it to require the variance seeker to perform further site assessment or site remediation activities. The existence, absence, or extent of such authority does not limit the County's absolute authority to grant, deny, or condition a variance from the Restrictions and Requirements of this Covenant.

6.03 Effects of a variance. A variance is not a revision to this Covenant. The County intends that issuance of a variance by DEH would entitle an Owner to assert related applicable defenses including equitable defenses to any attempt by the County to enforce this Covenant based on acts or omissions to act that were consistent with the issued variance.

6.04 Modification and Termination. Any Owner may apply to the County, through DEH, to terminate this Covenant as to any part of the Property, or to modify this Covenant by deleting a specific prohibition in paragraphs 4.01 or 4.02 of this Covenant. Subparagraphs (a) through (g) of paragraph 6.02 above shall apply to requests for termination or modification in the same manner they apply to requests for variances.

6.05 Notification to Department of Toxic Substances Control. The County will notify the Department of Toxic Substances Control (DTSC) within 30 days after the issuance or denial any variance, modification, or termination under this Article.

ARTICLE VII **MISCELLANEOUS**

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under federal or state law.

7.02 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, with the County Recorder's Office for the County of San Diego within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Community Development Commission of National City
1243 National City Blvd.
National City, CA 91950-3312
Attn: Redevelopment Director

To County Department: Department of Environmental Health
County of San Diego
1255 Imperial Avenue
San Diego, CA 92101
Attn: Site Assessment and Mitigation Division

Copy to: County Counsel
1600 Pacific Highway, Room 355
San Diego, California 92101
Attn: DEH Advisory

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph. After conveyance of this Property by the Covenantor future Notices shall be the responsibility of the owner of record as identified in the County Recorder's official books, and future notices to the person listed on the assessor tax role for any assessor parcel shall constitute adequate notice to the Owner of that part of the Property.

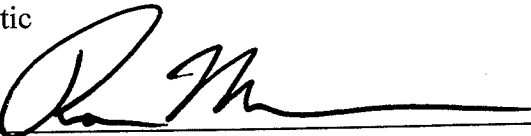
7.04 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties have executed this Covenant to be effective as of the date first written above.

CDC:

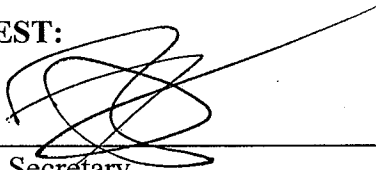
**COMMUNITY DEVELOPMENT
COMMISSION OF THE OF THE CITY OF
NATIONAL CITY**, a public body, corporate and
politic

By:



Ron Morrison, Chairman

ATTEST:



CDC Secretary

APPROVED AS TO FORM:

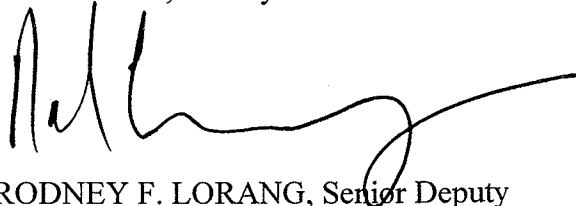


CDC Counsel

APPROVED AS TO FORM:

JOHN J. SANSONE, County Counsel

By



RODNEY F. LORANG, Senior Deputy

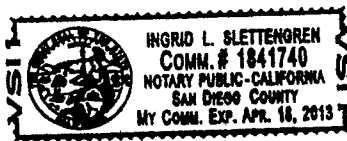
Attorneys for County of San Diego

SATE OF CALIFORNIA)
)ss.
COUNTY OF SAN DIEGO)

On MAY 14, 2009, before me Ingrid L. Slettengren,
a Notary Public in and for said State, personally appeared Ron Morrison
_____, who proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Ingrid L. Slettengren

(Seal)

EXHIBIT A

LEGAL DESCRIPTION

Order No. 7366105 UO3
APN: 559-118-02
National City Harbor District Project

EXHIBIT "A"

Lots 1 through 10, inclusive, Lots 13 through 22, inclusive, and all of the alley in Block 233 of National City, in the City of National of City, County of San Diego, State of California, according to map thereof No. 348, filed in the office of the county recorder of San Diego County, October 2, 1882.

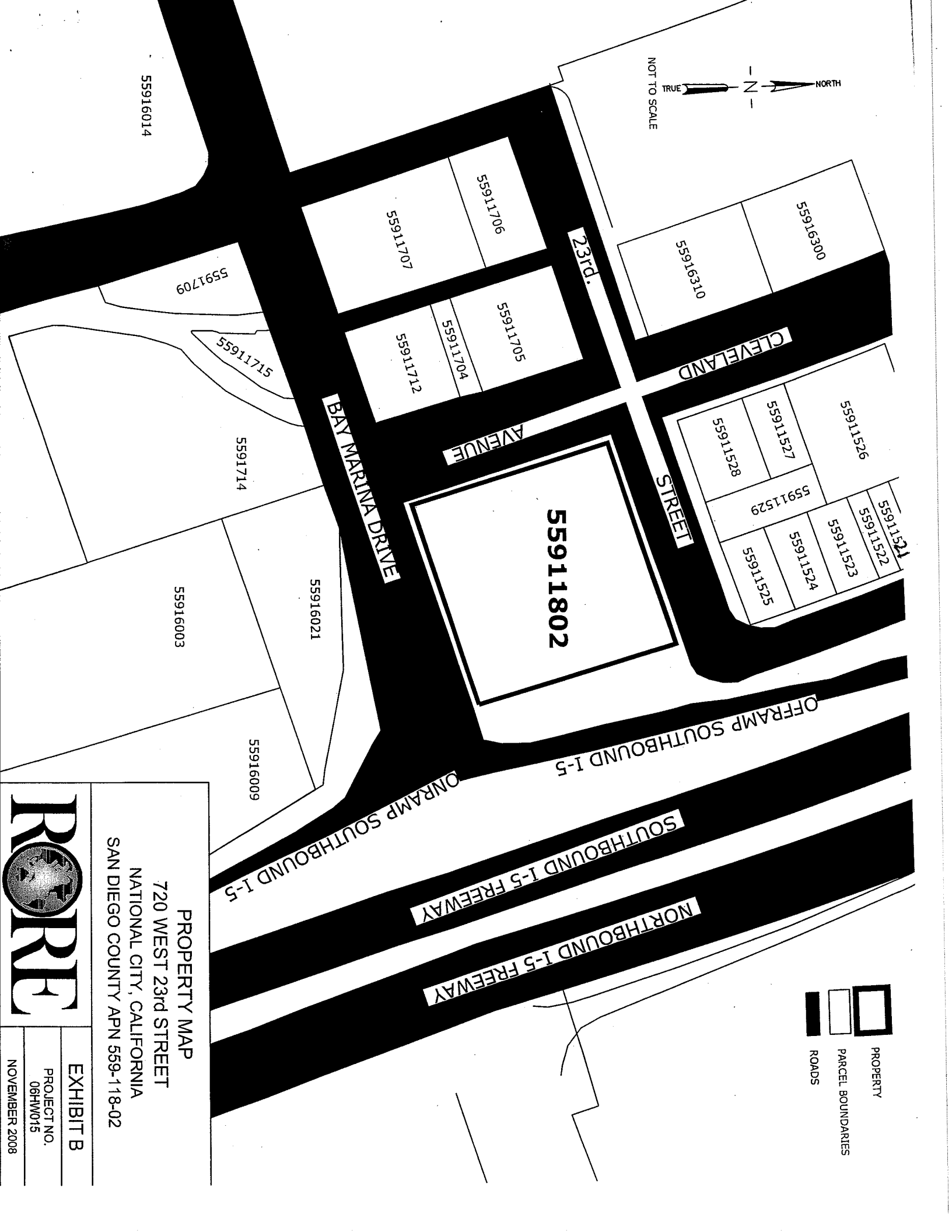
EXCEPTING from said Lots 13 through 22 inclusive, the northeasterly 30.00 feet thereof.

ALSO EXCEPTING THEREFROM that portion thereof lying below a dept of 500.00 feet, measured vertically, from the contour of the surface of said property, without however, the right, for any purpose whatsoever, to enter upon, into or through the surface of said property or any party thereof lying between said surface and 500.00 feet below said surface.

Exhibit "A" Ace Metals Recycling Company

EXHIBIT B

PROPERTY MAP



NOT TO SCALE

TRUE NORTH

- PROPERTY
- PARCEL BOUNDARIES
- ROADS

PROPERTY MAP
720 WEST 23rd STREET
NATIONAL CITY, CALIFORNIA
SAN DIEGO COUNTY APN 559-118-02




EXHIBIT B

PROJECT NO.
06HW015

NOVEMBER 2008